



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY* TIDEWATER REGIONAL OFFICE

L. Preston Bryant, Jr.  
Secretary of Natural Resources

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David K. Paylor  
Director

Francis L. Daniel  
Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO S.E.A. Solutions Corporation**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and S.E.A. Solutions Corporation for the purpose of resolving certain violations of environmental law and/or regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality.
4. "General Permit" means VPDES General Permit No. VAR05 for Storm Water Discharges Associated with Industrial Activity.
5. "Order" means this document, also known as a Consent Special Order.
6. "Property" means the waterfront land leased from and located behind Chesapeake Grain, Inc. at 5500 Bainbridge Boulevard in Chesapeake, VA, on the Southern Branch of the Elizabeth River.

7. "Regulation" means 9 VAC 25-151-10 *et seq.* the Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges Associated with Industrial Activity.
8. "SEA Solutions" means S.E.A. Solutions Corporation, certified to do business in Virginia, and its affiliates, partners, subsidiaries, and parents.
9. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
10. "USACE" means the U.S. Army Corps of Engineers.
11. "Va. Code" means the Code of Virginia (1950), as amended.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. SEA Solutions leases the Property, located on the Southern Branch of the Elizabeth River, which is considered to be state waters of the Commonwealth of Virginia, as defined by Va. Code §62.1-44.3.
2. On July 2, 2007 City of Chesapeake staff reported that SEA Solutions was performing ship dismantling on the Property.
3. On July 23, 2007 DEQ staff visited the Property along with the U.S. Coast Guard. The inspection confirmed ship dismantling of the Staten Island Ferry "American Legion". Coast Guard personnel found petroleum products onboard the American Legion. DEQ staff generated an inspection report detailing these findings.
4. On August 27, 2007 DEQ sent a letter to SEA Solutions including the July 23, 2007 inspection report. The report and letter noted that a permit was required prior to the commencement of further ship dismantling activities and a Stormwater Pollution Prevention Plan ("SWPPP") must be developed and implemented prior to issuance of coverage under the applicable permit, i.e. the General Permit for Discharges of Stormwater Associated with Industrial Activities. A General Permit registration statement was enclosed with the letter.
5. A phone conversation on September 7, 2007 between SEA Solutions and DEQ reiterated the need for a permit prior to dismantling of the Ferry. A letter on the same date, September 7, 2007, from SEA Solutions to DEQ stated "SEA Solutions shall obtain all required permits from responsible agencies prior to continuing the scrapping of the ferry American Legion."
6. In a November 7, 2007 phone conversation, SEA Solutions discussed with DEQ the possibility of pumping the Ferry of petroleum products and hauling it to another facility for dismantling. Again, DEQ staff reiterated that SEA Solutions would need a permit for dismantling activities.
7. On March 18, 2008 DEQ staff inspected the Property. Staff found SEA Solutions was continuing dismantling of the American Legion without a permit. A supervisor from SEA Solutions noted that approximately 1,000 gallons of oily

water remained in the hull of the American Legion. During the inspection a General Permit registration statement was given to the SEA Solutions supervising employee.

8. Va. Code § 62.1-44.16 states “any owner who erects, constructs, opens, reopens, expands or employs new processes in or operates any establishment from which there is a potential or actual discharge of industrial wastes or other wastes to state waters shall first provide facilities approved by the Board for the treatment or control of such industrial wastes or other wastes....Application for such discharge shall be made to the Board and shall be accompanied by pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the Board.” 9 VAC 25-151-60(A) of the Regulation states “the owner of a facility with storm water discharges associated with industrial activity who is proposing to be covered by this general permit shall file a complete and accurate VPDES general permit registration statement in accordance with this chapter at least two days prior to commencing the activity.”
9. SEA Solutions violated Va. Code § 62.1-44.16 and 9 VAC 25-151-60(A) by operating a ship dismantling facility without a permit.
10. DEQ issued Notice of Violation No. W2008-03-T-001, dated March 26, 2008, to SEA Solutions for operating a ship dismantling facility without a permit.
11. SEA Solutions submitted a complete and correct registration statement on April 14, 2008. On April 14, 2008, DEQ confirmed SEA Solutions registration under the General Permit through the assignment of registration No. VAR051837 to SEA Solutions for operation of its ship dismantling facility under the General Permit’s provisions including Sector N – Ship Dismantling, Marine Salvaging and Marine Wrecking.
12. On April 21, 2008 DEQ staff met with Bill and Steve Avery of SEA Solutions to discuss the Notice of Violation. SEA Solutions admitted fault in the permitting process.
13. A follow up inspection by DEQ on May 22, 2008 found the dismantling of the ferry American Legion was nearly complete. Only a small piece of the vessel remained and no other ship dismantling projects were observed on-site. Reportedly, the petroleum products on board the American Legion had been removed.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders SEA Solutions, and SEA Solutions agrees, to comply with the terms and conditions of the Stormwater General Permit Authorization No. VAR051837. In addition, the Board orders SEA Solutions, and SEA Solutions voluntarily agrees, to pay a civil charge of \$10,400.00 within 30 days of the effective date of the Order in settlement of the violations cited

in this Order. The payment shall note that it is being made pursuant to this Order. Payment shall be made by check payable to the "Treasurer of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality  
P.O. Box 1104  
Richmond, VA 23218

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of SEA Solutions, for good cause shown by SEA Solutions, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to SEA Solutions by DEQ on March 26, 2008. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, SEA Solutions admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. SEA Solutions consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. SEA Solutions declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by SEA Solutions to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. SEA Solutions shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. SEA Solutions shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. SEA Solutions shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
- a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which SEA Solutions intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee, and SEA Solutions. Notwithstanding the foregoing, SEA Solutions agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to SEA Solutions. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve SEA Solutions from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, SEA Solutions voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20<sup>th</sup> day of April, 2008. 9 Feb

Francis L. Daniel  
Francis L. Daniel

SEA Solutions voluntarily agrees to the issuance of this Order.

By: A. J. Avery  
Date: 10-15-08

Commonwealth of Virginia  
City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 15 day of  
October, 2008, by Ainee Avery, owner of  
(name)  
SEA Solutions on behalf of said corporation.

Lisa Baxter  
Notary Public  
LISA BAXTER  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES FEB. 28, 2009  
SERIAL # 210057

My commission expires: